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Texas House of Representatives, Criminal Jurisprudence Committee
State Capitol, Ext E2.112

RE: State Prosecuting Attorney's Response to Interim Charge 1

Dear Chair Collier and Committee Members:

STATUTORY AUTHORITY AND ORGANIZATION OF THE OFFICE OF STATE PROSECUTING ATTORNEY

The State Prosecuting Attorney (SPA) is appointed by the Texas Court of Criminal Appeals (CCA) and is statutorily directed to represent the State in criminal cases in both the courts of appeals and the Court of Criminal Appeals. *See* TEX. GOV'T CODE §§ 42.001, 42.005. The SPA has only two assistant prosecuting attorneys, *see id.*, and one administrative assistant.

THE OFFICE OF STATE PROSECUTING ATTORNEY'S CRUCIAL ROLE IN THE DEVELOPMENT OF THE STATE'S CRIMINAL JURISPRUDENCE

The OSPA focuses on arguing for the strict adherence to Texas's criminal statutes and the proper application of constitutional law in a manner favorable to prosecutors and law enforcement statewide. This is achieved by filing petitions for discretionary review (PDRs) in the CCA that are precisely engineered to persuade the Court to resolve an important legal issue and ultimately rule in the State's favor. The OSPA, with its extensive knowledge of CCA precedent, institutional workings, and history, carefully selects cases to PDR after an intermediate court of appeals has ruled against the State's interests. So far this biennium, the OSPA has filed 52¹ PDRs and 37 briefs

¹ The PDR tally is artificially inflated this biennium because the SPA has filed over 20 PDRs addressing the constitutionality of the time-payment and EMS fees. All those cases are being held for a decision in the lead case granted by the CCA in the last biennium.

(including amicus briefs in the Texas Supreme Court and briefs in the lower courts of appeals) and has reviewed approximately 385 appellate court decisions. Because the OSPA has statewide jurisdiction, its caseload comes from both large and small counties. Smaller jurisdictions may not have the expertise or manpower to handle complex appellate issues in the CCA. And, though large jurisdictions do not have the same limitations, the OSPA collaborates with those counties to implement the best litigation strategy and develop a consistent position on far-reaching procedural and substantive issues.

Some recent litigation highlights for the OSPA include:

- Defending against the judiciary's striking down of court cost and fee statutes on the ground that it violates the Governor's budget power and Legislature's power to create cost and fee statutes and enact the State's budget.
- Defending the "Revenge Porn," TEX. PENAL CODE § 21.16(b), and harassment, TEX. PENAL CODE § 42.07, statutes against First Amendment challenges.
- Arguing that TEX. CODE CRIM. PROC. art. 14.03(a)(1), according to its text, does not have an exigency requirement for warrantless arrests when a suspect is found in a suspicious place and the facts reasonably show the suspect committed a felony.
- Contending that the Legislature intended to permit punishment for both retaliation and the filing of a fraudulent financial statement in the same trial because the offenses have different immediate victims and serve distinct legislative purposes.
- Advocating that the State can obtain multiple convictions for failure to appear, *see* TEX. PENAL CODE § 38.10, when the defendant has multiple cases and related bonds and later fails to appear before the trial court at the same date and time.
- Maintaining that the Legislature intended punishments for both continuous sexual abuse, TEX. PENAL CODE § 21.02, and prohibited sexual conduct, TEX. PENAL CODE § 25.02, against the same child.

Finally, we continue to assist and collaborate with local prosecutors daily and educate criminal-law practitioners and judges.

COVID-19 IMPACT AND RANSOMWARE ATTACK

Because of the OSPA's small size and meticulous management, which includes a thorough Continuity of Operations Plan, the OSPA has been fully functional throughout COVID-19 and the ransomware attack. All the OSPA's essential and non-essential functions can be, and have been, performed remotely. Additional costs to the OSPA related to COVID-19 have been absorbed by the OSPA's 2020-2021 fiscal-year budgets.

THE OSPA AS A LEGISLATIVE RESOURCE

Though the Office is prohibited from influencing the passage or defeat of legislation, TEX. GOV'T CODE § 556.006, we are available to serve as advisors on criminal law and appellate practice. Additionally, the OSPA offers:

- A Statutory Construction Case Update of decisions from the Court of Criminal Appeals (published annually and distributed to the Legislature).
- Summaries of all issues granted by the Court of Criminal Appeals on PDR (posted on our website www.spa.texas.gov and Twitter Feed @OSPATX).

Thank you for this opportunity to discuss the OSPA's role in the criminal justice system. As always, I am available to answer any questions.

Stacey Soule

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State Prosecuting Attorney